



JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
STANLEY "SKIP" PRUSS, DIRECTOR

KEN ROSS
COMMISSIONER

BILL ANALYSIS

BILL NUMBER: House Bill 5151, as introduced

TOPIC: Expand remedies for failure to timely pay benefits

SPONSOR: Representative Rashida Tlaib

CO-SPONSORS: Representatives Jon Switalski, Sarah Roberts, Dian Slavens, Bob Constan, Mike Huckleberry, Bert Johnson, Andrew Kandrevas, Jim Slezak, Harold Haugh, Lesia Liss, Jennifer Haase, Jimmy Womack, George Cushingberry, Fred Miller, Shanelle Jackson, Fred Durhal, Coleman Young, Douglas Geiss, Woodrow Stanley, Timothy Bledsoe, Kate Segal, Marie Donigan, Andy Coulouris, Doug Bennett, Bettie Scott, David Nathan and Lisa Brown

COMMITTEE: Insurance

Analysis Done: July10, 2009

POSITION

The Office of Financial and Insurance Regulation (OFIR) supports this legislation with amendments.

PROBLEM/BACKGROUND

One of the touted benefits of the Essential Insurance Act (EIA) was to ensure that claims are settled promptly and that payments are received in a timely manner. However, if policyholders believe that their claims have been unfairly resolved and are unable to satisfactorily resolve the dispute themselves or with the assistance of OFIR, they must either settle for less than what they believe is appropriate or hire an attorney to pursue action against the insurer. The cost of this litigation often discourages individuals from pursuing action against the insurer even if they believe they have been treated unfairly. Because insurance companies are not required to report detailed claims and litigation data, it is difficult for the Commissioner to effectively monitor on an ongoing basis whether insurance companies are fulfilling their obligations to their policyholders.

The Commissioner has the authority to take action if an insurance company is found to have engaged in methods of unfair competition or unfair or deceptive acts or practices that are prohibited by Chapter 20 of the Insurance Code. Unfair or deceptive acts or practices can include failing to attempt in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear. However, there is no private cause of action under these provisions that would allow a claimant to recover damages, court costs and attorney fees against an insurer who fails to negotiate and settle an insurance claim in a timely manner and in good faith. Establishing such a cause of action and providing for specific damages would eliminate what some may perceive as a lack of good faith by insurance companies.

Until 2000, when the Legislature exempted insurers from the Michigan Consumer Protection Act (MCPA), plaintiffs suing insurers under the MCPA could also seek attorney fees for any violation by an insurer under provisions of the MCPA. The Legislature may wish to reconsider the exemption of insurers from the MCPA, a move that would automatically expose insurers to awards of attorney fees.

DESCRIPTION OF BILL

The proposed legislation would add Section 2090a to the Michigan Insurance Code to require an insurer pay reasonable attorney fees to an attorney representing a policyholder in a successful action to recover overdue insurance benefits. Additional compensation will be required if the failure to pay benefits in a timely manner was in bad faith. The legislation also requires insurers to notify the 3 largest national consumer reporting agencies to correct the error by the insurer when the insurer acted in bad faith.

SUMMARY OF ARGUMENTS

Pro

An insurer should have to pay penalties and correct an insured's credit standing in instances where it has been found to have settled an insurance claim in an untimely manner and/or in bad faith. When individuals go to court to seek remedy against insurance companies who do not settle their claims promptly and in good faith, the associated costs often far outweigh the amount they may receive in a judgment if they win the case. The costs often discourage individuals from pursuing action against an insurer, even if they have been treated unfairly. The availability of exemplary damages for individual claimants would act as a deterrent and encourage insurers to settle claims in good faith and in a timely manner.

Con

Policyholders already have the right to sue an insurer for breach of contract and to recover financial losses that may have resulted from the breach. Insurance fraud remains an ongoing concern in Michigan and insurance companies should not be forced to prematurely settle a claim until a thorough review is completed. The additional monetary penalties proposed in the legislation place an additional burden on insurers to settle claims before a thorough investigation

has been completed and may ultimately lead to additional litigation. These costs will be passed on to all policyholders.

RECOMMENDATIONS

This bill should be tie-barred to House Bill 4244 since House Bill 4244 adds a new Section 2090. House Bill 4244 defines "good faith" as "equal consideration" which is inconsistent with the use of "good faith" both in the Insurance Code and otherwise in Michigan law. To come up with a new definition of "good faith" in a new Section 2090 would only create confusion as the appropriate standard to apply in litigation. OFIR suggests elimination of these bad faith/good faith definitions and go back to the "reasonably in dispute" standard that has decades of interpretation as evidenced in case law, including the 1985 court case of All American Life & Casualty Company v Oceanic Trade Alliance Council International, Inc.

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in this bill:

(a) To the Office of Financial and Insurance Regulation:

Budgetary: OFIR may incur additional expense to ensure that consumers are aware of the amendments contained in this legislation through mailings and/or updates to current consumer publications.

Revenue: None

Comments:

(b) To the Department of Energy, Labor & Economic Growth: None known.

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan: None known.

Budgetary:

Revenue:

Comments:

(d) To Local Governments within this State: None known.

Comments:

OTHER STATE DEPARTMENTS

None known.

ANY OTHER PERTINENT INFORMATION

The proposed legislation is similar to bills introduced in previous and current legislative sessions as separate pieces of legislation.

ADMINISTRATIVE RULES IMPACT

The proposed legislation would amend the Michigan Insurance Code. OFIR has general rulemaking authority under the Insurance Code of 1956, 1956 PA 218.

A handwritten signature in black ink, appearing to be 'KR' followed by a long horizontal stroke.

Ken Ross
Commissioner

7-13-09

Date